

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MYLES CALABAZA,

Petitioner,

vs.

Civil No. 15-cv-01056-JCH-CG

FNU GLEASON,

Respondent.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Petitioner Myles Calabaza's *Motion to Vacate Order Granting Extension of Time to Respond*, (Doc. 12), filed December 18, 2015, and his *Motion to Vacate Amended Order Granting Extension of Time to Respond*, (Doc. 15), filed December 24, 2015. In each motion, Petitioner asks that the Court vacate United States Magistrate Judge Carmen E. Garza's orders granting the *United States' Motion for Extension of Time to Respond* ("Motion for Extension"). (Doc. 6). This Court will construe Petitioner's request as an objection to Judge Garza's ruling on a nondispositive pretrial matter pursuant to FED. R. CIV. P. 72(a). See FED. R. CIV. P. 72(a) ("A party may serve and file objections to [a magistrate judge's order on a pretrial matter not dispositive of a party's claim] within 14 days after being served with a copy."). Under that Rule, "[t]he district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law."

Judge Garza issued an *Amended Order Granting Extension of Time to Respond* (the "Amended Order"), (Doc. 10), granting the United States' Motion for Extension on December 17, 2015. As stated in the Amended Order, under Federal Rule of Civil

Procedure 6(b), the Court may extend the time for an act to be done for good cause, when the request is made before the original time expires. FED. R. CIV. P. 6(b)(1)(A). Here, Petitioner filed his *Petition Under 25 U.S.C. § 1303 for Writ of Habeas Corpus by a Person in Tribal Custody* ("Petition"), (Doc. 1), on November 18, 2015. The Court issued an *Order For Answer*, (Doc. 5), on November 24, 2015, directing Respondent to answer the Petition on or before December 10, 2015. On December 10, 2015, the United States filed its Motion for Extension on behalf of Respondent.

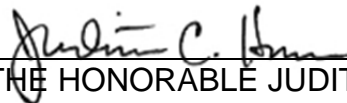
Judge Garza appropriately considered the United States' request and Petitioner's *Response to United States' Motion for Extension of Time to Respond*, (Doc. 9), and whether the United States has stated good cause for an extension of time to answer the Petition. Judge Garza found that, because the United States required more time to familiarize itself with the case and determine its response, it had stated good cause to grant the extension. Thus, the Amended Order is not contrary to law.

In addition, Petitioner has failed to demonstrate that the Amended Order is clearly erroneous. In his objection, Petitioner generally argues that Respondent has waived any right to respond to the Petition because Respondent failed to answer by the date ordered by the Court. (Doc. 15 at 3). Petitioner further argues, in conclusory fashion, that the fact that the United States had only recently become aware of the Petition and that it needed more time to familiarize itself with the case and prepare a response is not good cause. The Court has reviewed the record and agrees with Judge Garza that the United States stated good cause to grant the Motion for Extension and that Petitioner has not provided any information indicating otherwise. Accordingly, the Court finds that the Amended Order is not clearly erroneous.

In sum, Judge Garza's *Amended Order Granting Extension of Time to Respond*,

(Doc. 10), is neither contrary to law nor clearly erroneous. As a result Petitioner's objections will be overruled and the Amended Order will be affirmed.

IT IS THEREFORE ORDERED that Petitioner's *Motion to Vacate Order Granting Extension of Time to Respond*, (Doc. 12), and *Motion to Vacate Amended Order Granting Extension of Time to Respond*, (Doc. 15), construed as objections to Judge Garza's *Amended Order Granting Extension of Time to Respond*, (Doc. 10), be **DENIED** and **OVERRULED**, and that the *Amended Order Granting Extension of Time to Respond*, (Doc. 10), be **AFFIRMED**.



THE HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE